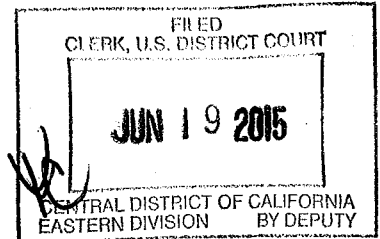


UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



Lenroy McLean
Plaintiff

v.

UNITED STATES OF AMERICA
Defendant

§
§
§
§
§
§
§

Case #: ED CV-15-275-MMM-(SP)

Amended Complaint

This is a 28 U.S.C. § 2671 Federal Tort claim and Bivens action Lawsuit.

Parties:

1. Lenroy McLean, plaintiff, may be found at Beaumont Federal Correctional, P.O. Box 26020, Beaumont, TX 77720.
 2. Phillip Gutierrez, warden;
 3. FNU Jenkins, Unit Manager;
 4. FNU Lawrence, Case Manager;
 5. SIS Lieutenant FNU, LNU; and
 6. Hernandez, FNU officer
- are all defendant(s), last known address was Victorville FCI Medium I, P.O. Box 5300, Adelanto, CA 92301.

Jurisdiction:

7. Plaintiff McLean is suing each defendant in his/her official and individual capacity pursuant to 28 U.S.C. § 2671 (Federal Tort Claim Act) and Bivens.

Statement of Facts:

8. On or about the 18th of November, 2011, McLean made an attempt to retain an attorney from his institutional trust account. Unit Manager Jenkins and SIS Lieutenant declined on two separate occasions, saying they won't be sending that kind of money to this individual, because he was not an attorney.
9. McLean sent an email to his attorney requesting for him to contact Warden Gutierrez to confirm that he was my attorney of record and I was retaining him on my habeas corpus to avoid being time barred.
10. A couple days later, McLean received two pieces of mail, one from his attorney and the other mail was addressed to Warden Gutierrez. They forwarded the Warden's mail with an "X" through his name and address and wrote McLean's name, number, and housing unit on the envelope, apparently to ignore my attorney verifying

himself. See Exhibit A.

11. By the 19th of December, 2011, McLean wrote the Honorable Judge presiding over his case and explained what was happening and asked that he intervene, shortly thereafter, McLean's attorney notified the court after several unsuccessful attempts to speak with Warden Gutierrez.

12. The Honorable Judge issued an order for both my attorney and the Assistant United States Attorney should appear by telephone conference to discuss McLean's concerns at Victorville FCI on the 5th of January, 2012.

13. As a result of the conference call, the SIS Lieutenant (name unknown) was pretty much upset and told McLean: "I will get you for having my ass chewed out" in the company of Officer Hernandez.

14. Unit Manager Jenkins and the SIS Lieutenant had to sign the approval for the check to my attorney. A total of two checks were withdrawn from McLean's account, the other check was going to Wells Fargo. The Wells Fargo check never made it to its destination, resulting into another investigation. See Exhibit B.

15. On the 17th of February, 2012, approximately 6:47 a.m., McLean exited the prison dining hall and was called by Officer Hernandez to be pat-searched. McLean then turned around and extended his arms and spread his legs apart. Officer Hernandez then instructed McLean to spread his legs further apart, while making it clear that if McLean lowered his arms, he (Hernandez) "was going to drop him".

16. While coming up McLean's leg, Officer Hernandez struck his genitals with such force, that it caused McLean to bend forward. There were four other staff members present, one of which did not find Officer Hernandez's action, behavior and conduct funny or amusing.

17. On or about February 19th, 2012, McLean filed an administrative remedy complaint of sexual conduct of intentional touching of his genitals with Warden's Office. Several days alter, a rejection notice was issued for Administrative Remedy # 677775-F1. See Exhibit C.

18. On the 13th of March, 2012, McLean filed an amended complaint for Administrative Remedy # 677775-F1, providing the names, locations, dates and requesting that during the course of the investigation video/camera footage be preserved for evidence and requested medical attention also. A Freedom of Information Act was made to the Regional Office. See Exhibit D.

19. In addition to filing the aforementioned complaint, McLean had his family, the Office of the Inspector General and Central Office notified simply because Warden Gutierrez failed to acknowledge his complaint. Pursuant to Policy Statement 5324.11, the Warden at each Federal Institution must ensure that all allegations of sexual misconduct are investigated. See also G 5324 A.02 PREA policy.

20. As a result of complaint to the higher authorities, McLean was escorted to the Medical Department and examined by Sibanda Hlenque (nurse). He was prescribed Tylenol for pain in his testicals and surrounding groin area.

21. Shortly thereafter, a medical doctor prescribed other medications for McLean such as Ciprofloxacin for infection due to blood found in his urine; Doxazosin for enlarged prostate, which was never detected upon several examinations; Propranolol prescribed for urine flow; Naproxen and Acetaminophen for pain.

22. McLean had no problems prior to the 17th of February, 2012, with his groin area, still experiences problems to this date. The Captain (Boling) took a sworn affidavit of the incident, tardy to the Administrative Remedy attempts. Post to the sworn affidavit, the Administration made several attempts to get McLean to sign another affidavit they drafted to withdraw his complaint, which McLean declined. See Exhibit E.

23. Warden Gutierrez, Unit Manager Jenkins and Case Manager Lawrence facilitated a retaliatory act by intentionally and maliciously refusing to update McLean's sentry records before processing his transfer from a disciplinary Medium Security prison to a disciplinary Low Security prison. See Exhibit F.

24. By the 29th of January, 2013, McLean wrote to the United States Attorney General's Office, asking them to intervene and compel the Bureau of Prisons to comply with the grievance procedure to satisfy PLRA. See Exhibit G.

25. McLean was given permission to file his Administrative Remedy #726456-F1 on or about March 6, 2013, of unprofessional, inappropriate conduct or misconduct by staff, consultant referrals and recommendations after a fierce battle, followed by a Tort Claim #TRT-WXR-2013-04714 filed on the 1st of May, 2013.

26. Warden Gutierrez is the Chief Executive Officer over the Bureau of Prison Employees at the Victorville FCI and is therefore responsible for the wrongful actions of his staff, these relevant defendants to the events described herein, have acted and continue to act under the color of Federal Law.

27. Federal Tort Claim Act claims may be brought against only the United States, and not the agencies or employees of the United States. McLean would like to add Tort Claim #TRT-WXR-2013-04714 to satisfy F.T.C.A.

Relief:

Each defendant is/are being sued in their individual capacity for the monetary amount of \$25,000 (Twenty-five Thousand Dollars)'

Each defendant is being sued in their official capacity for the monetary amount of \$50,000 (Fifty Thousand dollars);

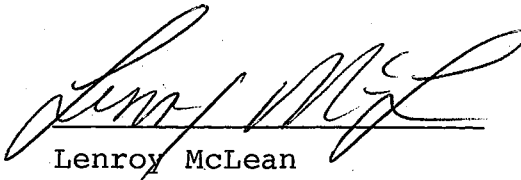
Wherefore, McLean respectfully prays that this court:

- A. Declare that the acts and omissions described herein, violated McLean's rights under the Constitution and Laws of the United States;
- B. Enter judgment against all defendants for the amount requested;
- C. Order defendants to pay compensatory and punitive damages within their individual and official capacity;
- D. McLean requests a trial by jury; or
- E. Grant other just and equitable relief that this Honorable Court deems necessary.

I, Lenroy McLean, plaintiff, duly said that the foregoing is true and correct, under penalty of perjury, title 28 U.S.C. § 1748.

Date:

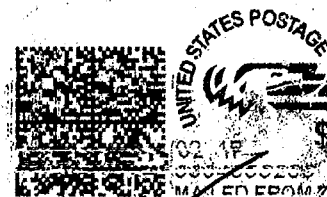
6-13-2015


Lenroy McLean

EXHIBIT

A

LAW OFFICE
OF
B. ALAN SEIDLER
580 BROADWAY
NEW YORK, NEW YORK 10012



Warden Philip Guttierrez
FCI Victorville Medium I
FCI
Box 5400
Adelanto, CA 92301

132 McLean
61524-054
B1/2 H07

92301540000

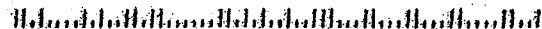


EXHIBIT B



U. S. Department of Justice
Federal Bureau of Prisons

*Los Angeles Consolidated Legal Center
Metropolitan Detention Center Los Angeles*

535 N. Alameda Street
Los Angeles, CA 90012

DATE MAILED: NOV 02 2012
Certified Receipt: 7008 1830 0002 6405 6882

Lenroy McLean
Reg. No. 61524-024
FCI Victorville
Federal Correctional Institution I
P.O. Box 3725
Adelanto, CA 92301

RE: Administrative Claim No. TRT-WXR-2012-04487

Dear Claimant:

This is in response to the administrative claim submitted to the office under the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671, et seq. You seek \$100.00 in compensation for alleging a check for \$100.00 was withdrawn from your Trust Fund Account, was never received and money never returned to your account while at the Federal Correctional Complex, Victorville, California.

An investigation into your claim was conducted and completed. Investigation revealed on January 5, 2012, the amount of \$100.00 was released from your account as you requested on the form BP-199. Your account notes the withdrawal was for a savings account. On June 15, 2012, the U.S. Treasury check was voided, and the money was returned to your account. As this transaction occurred after the date of your claim, this issue is resolved. The investigation fails to disclose any evidence of negligence for which the United States is liable. You have failed to establish that you have suffered an injury as a result of staff negligence in this matter.

Accordingly, your claim is denied. If you are not satisfied with this determination, you are afforded six months from the date of the mailing of this letter via certified mail in which to bring suit in the appropriate United States District Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Eliezer Ben-Shmuel".

Eliezer Ben-Shmuel
Supervisory Attorney

Dennis M. Wong
Western Regional Counsel

EXHIBIT C

REJECTION NOTICE - ADMINISTRATIVE REMEDY

DATE: FEBRUARY 28, 2012

FROM: ADMINISTRATIVE REMEDY COORDINATOR
VICTORVILLE MED I FCI


TO : LENROY MCLEAN, 61524-054
VICTORVILLE MED I FCI UNT: B1/2 QTR: B01-107U
P.O. BOX 5400
ADELANTO, CA 92301

FOR THE REASONS LISTED BELOW, THIS ADMINISTRATIVE REMEDY REQUEST IS BEING REJECTED AND RETURNED TO YOU. YOU SHOULD INCLUDE A COPY OF THIS NOTICE WITH ANY FUTURE CORRESPONDENCE REGARDING THE REJECTION.

REMEDY ID : 677775-F1 ADMINISTRATIVE REMEDY REQUEST
DATE RECEIVED : FEBRUARY 28, 2012
SUBJECT 1 : UNPROFESSIONAL, INAPPROPRIATE CONDUCT OR MISCONDUCT BY STAFF
SUBJECT 2 :
INCIDENT RPT NO:

REJECT REASON 1: YOU DID NOT ATTEMPT INFORMAL RESOLUTION PRIOR TO SUBMISSION OF ADMINISTRATIVE REMEDY, OR YOU DID NOT PROVIDE THE NECESSARY EVIDENCE OF YOUR ATTEMPT AT INFORMAL RESOLUTION.

REJECT REASON 2: YOU MUST PROVIDE MORE SPECIFIC INFORMATION ABOUT YOUR REQUEST/APEAL SO THAT IT MAY BE CONSIDERED. WE NEED TO KNOW YOUR SPECIFIC CONCERN AND HOW IT RELATES TO THE BUREAU'S ASPECT OF YOUR CONFINEMENT.

REMARKS  STAFF MEMBER NAME WHO COMMITTED THE ACT MUST BE LISTED. NAME OF THE FEMALE LT MUST BE LISTED

We need to know who we are investigating.

Attachment is in regards to your mail.

EXHIBIT

D

March 13, 2012

To: Administrative Remedy Coordinator, Ms. Helman

From: McLean, Lenroy 61524-054

Re: Amending Complaint 677775-F1

Date: March ¹³th, 2012

Upon information and belief, unknown female is acting Lt. Doud and unknown officer was Hernandez in the above referenced complaint. I am requesting that during the course of the investigation, that video/camera footage be preserved for evidence of the appropriate dates and times listed below.

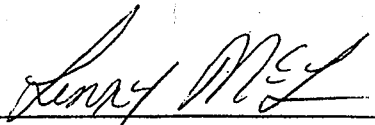
I am still feeling pain, tenderness and swelling on the right side of my testicles and need to be examined by someone that specializes within that area.

Dates and times:

- 1) Feb. 17th, 2012 approx 6:47AM Incident with staff in front of mess hall.
- 2) Feb. 17th, 2012 approx 10:30AM Acting Lt Doud incident with McLean again in front of mess hall.
- 3) Feb. 21st, 2012 approx 7:30^{AM} Lt. Williamson by the metal detector making fun of the Feb 17th incident.

3/13/2012

CC file


LENROY McLEAN
61524054

• Lenroy Mclean 61524-054
Victorville FCI Med #1
P.O. Box 5300
Adelanto, CA 92301

Western Regional Office
7338 Shoreline Drive
Stockton, CA 95219

RE: F.O.I.A.

To whom this may concern,

I would like to request video/camera footage of the following date and time at the Victorville FCI Medium #11 on the 17th of Feb 2012 approx. 6:47am in front of the mess hall a pat search of Mclean by officer Hernandez to be preserved for the court.

2) Feb. 17th, 2012 approx. 10:30am, Mclean with Acting Lt. Doud in front of the mess hall and

3) Feb. 21st, 2012 approx. 7:30am Lt. Williamson by the metal detector with other officers making fun of Mclean going by.

Thanking you in advance for your time and consideration given to this matter.

Date: 3-13-2012

Signature:

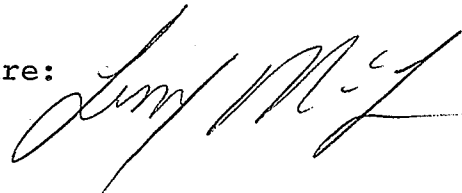
A handwritten signature in cursive script, appearing to read "Lenroy Mclean", written in dark ink.

EXHIBIT E

URINALYSIS

Siemens
Clinitek Status®

Serial Number: 221058

Patient Name: MCLEAN LENROY

Patient ID: 61524-054

Multistix® 10 SG
Test date 11-29-2012

Time 10:37

Operator GGONZALES

Test number 0419

Color Yellow

Clarity Clear

GLU Negative
BIL Negative
KET Negative
SG 1.020
BLO Trace-lysed
pH 6.0
PRO Negative
URO 0.2 E.U./dL
NIT Negative
LEU Negative

NOV 2012

12-22

FCI

J. Partida, MD
Clinical Director
FCI Big Spring

BIG SPRING

EXHIBIT

F

VIMH2 606.00 *
PAGE 001 OF 001

MALE CUSTODY CLASSIFICATION FORM

08-23-2012
14:45:28

(A) IDENTIFYING DATA

REG NO.: 61524-054

FORM DATE: 05-22-2012

ORG: DSC

NAME: MCLEAN, LENROY

MGTV: POP MGT

PUB SFTY: ALIEN, SENT LGTH

MVED: 05-22-2013

(B) BASE SCORING

DETAINDER: (0) NONE

SEVERITY: (3) MODERATE

MOS REL.: 156

CRIM HIST SCORE: (04) 6 POINTS

ESCAPES: (0) NONE

VIOLENCE: (2) > 15 YRS SERIOUS

VOL SURR: (0) N/A

AGE CATEGORY: (2) 36 THROUGH 54

EDUC LEV: (0) VERFD HS DEGREE/GED

DRUG/ALC ABUSE: (0) NEVER/>5 YEARS

(C) CUSTODY SCORING

TIME SERVED: (3) 0-25%

PROG PARTICIPAT: (1) AVERAGE

LIVING SKILLS: (1) AVERAGE

TYPE DISCIP RPT: (2A) 1 HIGH

FREQ DISCIP RPT: (3) NONE

FAMILY/COMMUN: (4) GOOD

--- LEVEL AND CUSTODY SUMMARY ---

BASE CUST VARIANCE	SEC TOTAL	SCORED LEV	MGMT SEC LEVEL	CUSTODY	CONSIDER
+11 +14 0	+11	LOW	N/A	IN	SAME

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

BIGEM 606.00 * MALE CUSTODY CLASSIFICATION FORM * 12-10-2012
 PAGE 001 OF 001 10:34:22

(A) IDENTIFYING DATA

REG NO.: 61524-054 FORM DATE: 10-17-2012 ORG: DSC
 NAME: MCLEAN, LENROY

MGTV: NONE

PUB SFTY: ALIEN, SENT LGTH

MVED:

(B) BASE SCORING

DETAINER: (0) NONE SEVERITY: (3) MODERATE
 MOS REL.: 151 CRIM HIST SCORE: (04) 6 POINTS
 ESCAPES: (0) NONE VIOLENCE: (2) > 15 YRS SERIOUS
 VOL SURR: (0) N/A AGE CATEGORY: (2) 36 THROUGH 54
 EDUC LEV: (0) VERFD HS DEGREE/GED DRUG/ALC ABUSE: (0) NEVER/>5 YEARS

(C) CUSTODY SCORING

TIME SERVED: (3) 0-25% PROG PARTICIPAT: (1) AVERAGE
 LIVING SKILLS: (1) AVERAGE TYPE DISCIP RPT: (2A) 1 HIGH
 FREQ DISCIP RPT: (3) NONE FAMILY/COMMUN: (4) GOOD

--- LEVEL AND CUSTODY SUMMARY ---

BASE CUST	VARIANCE	SEC TOTAL	SCORED	LEV	MGMT	SEC LEVEL	CUSTODY	CONSIDER
+11	+14	0	+11	LOW	N/A		IN	SAME

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

EMS-409.051 REQUEST FOR TRANSFER/APPLICATION OF MANAGEMENT VARIABLE CDFRM
SEP 2006

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

From: <u>Warden/Superintendent</u> <u>R. Philip Guttierrez, Warden</u>	Facility FCI I Victorville	Date <u>10/4/2012</u>
Inmate's Name MCLEAN, Lenroy	Register No. 61524-054	

To: (Designations and Sentence Computation Center Administrator)
Jose A. Santana, Chief

- ☒ Transfer to: Any appropriate facility near Jamaica, New York, (Code 308/Lesser Security)
☒ Apply Management Variable(s) _____
 _____ Update Management Variable Expiration Date. (New Date): _____

1. Inmate's Medical Status

There are no known medical or psychological restrictions which would preclude a transfer at this time.

2. Institution Adjustment (Include a brief description of the inmate's adjustment during this period of incarceration with emphasis on recent adjustment.)

MCLEAN's institutional adjustment is considered good. He receives good work evaluations, has completed five classes and has completed the Inmate Financial Responsibility program.

3. Rationale for Referral. (For Mariel Cuban Detainees, include availability of community resources and status of INS review process in this section.)

MCLEAN was designated to this facility on March 11, 2011, as a medium security level custody inmate, with an MSL of a Medium He has a projected release date of June 04, 2025, via Good Conduct Time Release. His Custody Classification Form was recently updated, and he is now a "low" security inmate. Since his arrival at FCI Victorville he has completed five educational classes and completed the Inmate Financial Responsibility program. The Unit Team request he be transferred to Jamaica, New York or any facility deemed appropriate to his security level. If transfer is denied, please apply the appropriate management variable.

4a. Parole Hearing Scheduled: ☐ Yes ☒ No b. If yes, when N/A

5. Note any past or present behavior and/or management/inmate concerns.
NONE.

6. BP337/BP338 Discrepancies.

There are no discrepancies between the BP-337 and the BP-338.

Staff have checked the following SENTRY Programs to ensure that they are correct and current:

Inmate Profile	CIM Clearance and Separatee Data
Inmate Load Data	Custody Classification Form
Sentence Computation	Chronological Disciplinary Record

Prepared by: M. Lawrence, Case Manager

Unit Manager Signature: P. Jenkins

If the transfer is approved, a Progress Report will be completed prior to transfer.
 *For Mariel Cuban Detainees - Staff have entered the CMA Assignment of "CRP Panel" to the need for a Cuban Review Panel Hearing four months from his/her Roll-Over Date.

(This form may be replicated via WP)

This form replaces EMS-409 of DEC 99

EXHIBIT G

Received

FEB 5 2013

Bureau of Prisons
Legal Department, SCRO

January 29, 2013

Lenroy McLean
Reg No: 61524-054
Federal Correctional Inst.
1900 Simler Avenue
Big Spring, Texas 79720

Eric Holder
United States Attorney General
950 Pennsylvania Ave
Washington, DC 20530

Re: U.S.C.S § 1997(a)(e) Failure of State to adopt or adhere
To Administrative Grievance Procedure.

Dear Sir;

Good day to you and the rest of your staff and I hope all is well.

I am writing you this brief letter with the hope that you can

assist me with my request. On the 19th of February 2012, an

administrative remedy procedure was filed at the Victorville

Federal Correctional Institution, CA. The administration

Coordinator issued a rejection notice with a remedy #677775-F1, an

amendment was made shortly after followed by Regional and Central

Office Administrative Remedy appeals which is been ignored. (see

attachment). I was transfered to the Big Spring FCI, Texas. Upon

arrival the Central Regional Coordinator in Dallas, Tx was

notified asking her advice, which was futile. (see attachment).

Section 1997(a) authorizes the Attorney General to intervene in

cases where institutionalized person are being denied rights or

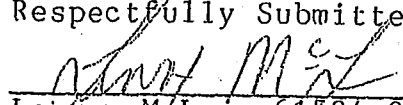
priveleges secured or protected by the Constitution or Laws of

the United States. I am requesting your assistance with having

677775-R4

the Federal Bureau of Prison to comply with the grievance procedure. Thank you very much in advance with your prompt response with this matter. Your time and consideration was greatly appreciated by me.

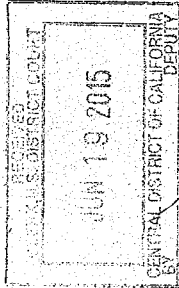
Respectfully Submitted


Lenroy McLean 61524-054
1900 Simler Avenue
Big Spring, Texas 79720

CC: File
Central Office (FBOP)
Central Regional Coordinator (Dallas Tx)
Inspector General

LEAHY McLean 61524054
Beaumont Federal Correctional Institution
P.O. Box 26020
Beaumont, TX 77720

[Handwritten signature]



Clack of the Court
United States District Court
312 North Spring St
Los Angeles, CA
90012

